

REMARKS

This paper is filed in response to the Office Action mailed 27th July 2004. Claims 3, 5, 6, 8, 9, 11, 13, 14, 16 and 23 to 26 were pending in the application. Claims 3, 5, 9, 11 and 13 have been amended. Claims 6 and 14 have been cancelled. Therefore claims 3, 5, 8, 9, 11, 13, 16 and 23 to 26 are now pending in the application and are submitted for reconsideration.

Voluntary Amendments to the Claims:

Claim 9 has been amended to correct the dependency from a cancelled base claim.

Claims 5 and 13 have been amended to delete features that have been introduced into the independent claims.

Rejection of Claims 3, 5, 6, 8, 9, 11, 13, 14, 16 and 23 to 26:

Claims 3, 5, 6, 8, 9, 11, 13, 14, 16 and 23 to 26 were rejected under 35 U.S.C. § 112, first paragraph as failing to disclose the best mode.

The Examiner has raised the objection that there is concealment of the best mode because certain features of the claims are not supported in the specification. In particular, the Examiner has indicated that it is unclear how the "calculation of a travel mode for the portion of the trip" is made and also how the efficiency function is determined.

With respect to the determination of the efficiency function, Applicant has made all possible efforts to now restrict the independent claims to the specific example as disclosed in the application in relation to the functions of traction force and vehicle speed. It is thus clear that the efficiency function may be determined on the basis of standard information for any locomotive (e.g. available from the manufacturer). An example of the determination of efficiency for two typical electric locomotives is given in Figures 1 and 2.

The Examiner may also choose to regard this as a "best mode" of the invention, as of course, the efficiency could also be determined and optimized as a function of other variables such as temperature. On the basis of this restriction, Applicant believes that the objection under 35 U.S.C. § 112 is now moot.

Additionally, applicant reaffirms once again that there has been no intentional concealment of the best mode as known to the applicant at the date of filing of the present application. To the extent a best mode was available at that time, this has been included in the specification. No evidence of concealment has been provided to support such allegation and applicant requests withdrawal of this rejection.

Furthermore, with regard to the best mode objection it is noted that in the recent decision *High Concrete v. New Enterprise*, No. 03-1477, the Federal Circuit found "The best mode requirement of §112 is not violated by unintentional omission of information that would be readily known to persons in the field of the invention. Known ways of performing a known operation cannot be deemed intentionally concealed absent evidence of intent to deliberately withhold that information." As there cannot be shown any intention to deliberately withhold information it is believed that the present objection is unjustified.

As has been previously explained, the present invention is simple but of fundamental importance to reducing energy consumption. It teaches the skilled person to use a function of both speed and traction to optimize the efficiency. Previous methods did not take vehicle speed into account. This is the invention. The precise form of the algorithm is trivial for a software programmer to implement once the choice of parameters has been defined.

Applicants respectfully submit that nothing in the art of record teaches or suggests the present invention. In particular, the determination of the operating point characteristic of speed and traction of the vehicle and the optimization thereof have not been disclosed or suggested.

The Examiner has also indicated that the drawings fail to show the feature "procedure for determining and calculating". As this feature is an action forming part of a method, it is believed inappropriate to require this feature to be shown, since only elements may be clearly depicted in figures - not actions. Nevertheless, if the Examiner wishes to maintain this objection, Applicant would be willing to include a block diagram indicating that such procedures take place.

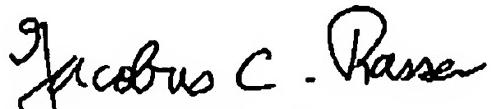
In view of the above, Applicants respectfully request withdrawal of the rejections and allowance of claims 3, 5, 8, 9, 11, 13, 16 and 23 to 26.

Any extension of time that may be deemed necessary to further the prosecution of this application is hereby requested. The Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 08-3038, referencing the docket number shown above.

The Examiner is respectfully requested to contact the undersigned in order to resolve any questions and hopefully bring this matter to a close. As the Applicant's representative is

located in Europe, the Examiner is respectfully requested to issue a brief email to rasserk@howrey.com indicating an appropriate time for a telephone interview.

Respectfully submitted,



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